

## **VII. Working with States, EPA, and Other Agencies**

### **Roles and Responsibilities**

#### **Notes:**

This section outlines the interplay of responsibilities of affected federal and state agencies.

The section also describes the process by which these responsibilities are implemented at federal facilities listed on the NPL.

## Introduction

- “Lead” and “support” agencies share responsibility for evaluation of ARARs
- Coordination between agencies is essential

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### Notes:

Responsibility for planning and implementing response action in general, and for identifying and evaluating potential ARARs in particular, is delegated among several federal and state agencies.

One agency, designated as the “lead agency,” is responsible for planning and implementing response action. Other agencies with jurisdiction, or expertise, related to the release site, will serve as “support agencies.” Each support agency is responsible for providing relevant information to the lead agency reviewing and commenting on response data and lead agency proposals, and providing other assistance requested by the lead agency.

Lead and support agencies each have specific responsibilities related to identifying and evaluating potential ARARs, and evaluating response action alternatives for compliance with identified ARARs.

## DOE Lead Agency Authority

- CERCLA delegates response authority to the President
- President has delegated to DOE
- DOE's response authority includes responsibility to identify and select ARARs

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### Notes:

The authority conferred by Section 104 of CERCLA to take response action is delegated by Congress to the President. By Executive Order 12580, the President has delegated this response authority among several federal agencies, authorizing these agencies to take response action to address releases on property for which the agency is responsible.

In particular, DOE has been delegated response action authority to evaluate the need for, plan, and implement response action at DOE facilities. In other words, DOE is the lead agency responsible for planning and implementing actions to address the release or threatened release of hazardous substances at DOE facilities. As the lead agency, DOE has primary responsibility for determining ARAR for each release, and for ensuring selected response action meets these ARARs, or merits an ARAR waiver.

## **Lead Agency Responsibilities-Overview**

- Identify ARARs in conjunction with support agencies
- Evaluate waiver decisions
- Prepare administrative record including ARARs data
- Ensure compliance with and attainment of ARARs

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### **Notes:**

The lead agency has broad responsibility for identifying and evaluating potential ARARs in consultation with all support agencies.

As subsequent modules on the remedy selection process will discuss in more detail, the lead agency is responsible for:

- a preliminary identification of ARARs during site characterization and early in the RI scoping process;
- requesting input during site characterization from support agencies concerning potential ARARs under their jurisdiction;
- requesting additional input from support agencies after the feasibility study's initial screening of alternatives but prior to the detailed comparative analysis of alternatives;
- providing support agencies with opportunities to review and comment on proposed determinations regarding potential ARARs including the RI/FS and proposed plan;
- notifying support agencies of requirements the lead agency has determined are ARARs.

## EPA Authority

- EPA has concurrence authority over selection of remedial action selection at NPL sites
- Interagency Agreements (IAGs) establish framework for EPA oversight

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### Notes:

What about EPA? Isn't EPA in charge of planning and selecting response action?

The answer rests on the fact that EPA retains final approval authority for *remedial action* selected at DOE facilities listed on the NPL. This authority to concur in remedial action selected by DOE, or veto such action and select a different action, gives significant responsibility to EPA for the evaluation and identification of ARARs.

EPA also is responsible for oversight of compliance with requirements and commitments established by CERCLA, the NCP, and an IAG or other agreement.

Nevertheless, DOE retains lead agency responsibilities for ARARs identification and selection. The challenge presented is to integrate and coordinate DOE lead agency responsibilities with the final remedy selection responsibilities of EPA. As discussed later in this module, the interagency agreement is the means by which this coordination is most often attempted.

## State Authority

- State agencies have CERCLA authority to participate in identifying and reviewing potential ARARs
- State agencies may have independent authority to require compliance with state ARARs

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### Notes:

What about states? Can states require a selected remedy to attain certain ARARs or other state standards?

Where a state agency has support agency responsibilities, it is responsible for identifying, and notifying the lead agency of state standards or requirements that it determines are *potential* ARARs. The state agency may also identify state guidance or advisories that the state believes offer other information TBC. The lead agency must solicit input from the state agency, and evaluate potential state ARARs identified by the state. The lead agency however, and not the support agency, retains responsibility for identifying *actual* ARARs from the list of potential ARARs submitted by support agencies.

In other words, a state support agency cannot require the lead agency to select a remedy to attain a state standard where the lead agency determines that the state standard does not qualify as an ARAR or determines that an ARAR-waiver is justified. There are, however, two exceptions to this rule:

- where the lead agency incorrectly determines that a state requirement is not “applicable” to the release, the state may pursue enforcement of the requirement. This enforcement is independent of the CERCLA process.
- where the lead agency selects a remedy that does not attain a state ARAR (i.e., determines that a waiver is justified), Section 121 (f)(3) allows the state to require that the ARAR be attained, provided that the state pays the additional cost attributable to attaining such ARAR.

## State ARARs

- Promulgated State standards
  - ⇒ Legally enforceable
  - ⇒ Generally applicable
- More stringent than federal requirements
- Identified by state in a timely manner

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### Notes:

Promulgated requirements generally consist of state statutes and regulations adopted by authorized state agencies. A state requirement is promulgated if it is legally enforceable and of general applicability. A requirement is legally enforceable if it contains specific enforcement provisions or is enforceable through the state's general authority. A requirement is generally applicable if it applies to all remedial actions covered by the requirement, not just CERCLA sites.

EPA considers a state requirement to be more stringent than federal requirements if it is "at least" as stringent. State requirements that do not have a federal counterpart are generally more stringent because they add new requirements.

Stringency must be decided on a case-by-case basis. A direct comparison between federal and state requirements is usually needed to determine which requirement is more stringent. In some cases, federal and state requirements may not be directly comparable. For example, one requirement may specify a maximum rate of release of a contaminant and the other requirement may specify a maximum volume of release of the contaminant. In these situations, the lead and support agencies should reach an agreement on the more stringent requirement based on best engineering judgment.

## Other Support Agencies

- Federal agencies that may also have support agency responsibilities include:

- ⇒ Corps of Engineers
- ⇒ U.S. Coast Guard
- ⇒ Nuclear Regulatory Commission
- ⇒ Defense Nuclear Facilities Safety Board
- ⇒ Fish and Wildlife Service

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### Notes:

Federal agencies other than EPA may serve as a support agency with respect to DOE sites where the release impacts or affects resources or property under their jurisdiction, or where the agency has expertise or responsibility pertinent to the release.

These agencies are responsible for identifying, and providing other support related to, standards or requirements pertinent to the property or resources under their jurisdiction, the statutes or regulations which they administer, or other responsibilities within their jurisdiction.

## Interagency Agreements (IAGs)

- IAGs required at each federal facility listed on the NPL
- IAGs specify process for reviewing, evaluating, and selecting remedial action
- IAGs may alter roles and responsibilities of lead and support agencies
- IAGs establish dispute resolution procedures

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### Notes:

Section 120 (e) of CERCLA requires for each federal facility listed on the NPL an IAG between the federal owner/operator and EPA. States are encouraged, but not required to be a party to such agreements. Such IAGs may also be known as FFA or FFCA.

An IAG generally will establish specific documents and points in the process for identification of ARARs and consultation between the lead and support agencies. These points in the process may either alter or augment identification, and review and comment, opportunities specified by the NCP. For example, an IAG may require DOE to solicit comments from support agencies concerning identification of ARARs more frequently than required by the NCP.

In addition, the IAG for a facility generally will include specific provisions that alter the responsibilities of the lead and support agencies related to identification and evaluation of potential ARARs.

For example, an IAG may shift all responsibility for the preliminary identification of ARARs to DOE as lead agency. Support agencies may be responsible only for review and comment on the potential ARARs identified by DOE. In addition, an IAG may specify that support agencies have concurrence authority over the lead agency's selection of ARARs, even though CERCLA does not specifically grant support agencies this authority.

## Conclusion

- As lead agency, DOE is responsible for identifying, evaluating, and selecting ARARs
- Responsibility must be coordinated with:
  - ⇒ EPA oversight and remedy approval responsibility
  - ⇒ State consultation and independent enforcement responsibility
  - ⇒ Process and interaction established by IAG

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**Notes:**